

MINUTES
INDIAN LAKE BOROUGH COUNCIL MEETING
APRIL 14, 2010

The regularly scheduled meeting of the Indian Lake Borough Council was held on April 14, 2010 at 7:00 P.M. at the Indian Lake Borough Building.

THOSE PRESENT:

Robert Hanson, President
Patricia Dewar
Charles McCauley
Robert Marhefka
Robert Vogel
Richard Stern
Paul Cornez
Michael D. Miscoe, Mayor
Dan Rullo, Solicitor
Theresa L. Weyant, Borough Manager/Secretary
Dean Snyder, Zoning Officer

THOSE ABSENT:

Visitors – Sean Isgan, Tom O’Toole, Ken Helsel, Lee Nearhoof, Albert Diehl, Forrest Schucker, Ronald Petrina, Larry Crespo, Roy Fritz, and Robert Oates.

The meeting was called to order at 7:03P.M. by Robert Hanson, Council President.

ORDER OF BUSINESS

1. Approve the Minutes of the Meeting Held on March 10, 2010 - Hanson asked for additions and/or corrections. There being none, Dewar made a motion to approve the minutes as submitted. Cornez seconded the motion. 5 ayes and 2 abstentions. Motion carried. McCauley and Vogel filed their Abstention Memorandum with the Borough Secretary.

2. Financial Reports – Dewar made a motion to approve the Finance Committee’s recommendation to approve the Borough’s Financial Reports, including the amendments to the List of Bills Report, and to pay the outstanding bills except for the bills to GAI Consultants, which totals \$54,595.97; the bill from ASAP Court Reporting, which totals \$300.00; and the bill from Tri-Star, which totals \$422.00, payment should be withheld. Cornez seconded the motion. All ayes, motion carried.

Dewar made a motion, based on the recommendation of the Finance Committee, to approve the Water Works Financial Reports and to pay the outstanding bills. Stern seconded the motion. All ayes, motion carried.

Dewar made a motion, based on the recommendation of the Finance Committee, to approve the Sewer Financial Reports, and to pay the outstanding bills. Cornez seconded the motion. All ayes, motion carried.

Dewar made a motion, based on the recommendation of the Finance Committee, to approve the Summary of Account Balance Report as presented. Stern seconded the motion. All ayes, motion carried.

Dewar made a motion to authorize the Borough Manager to transfer \$248,605.89 from the PNC Bank Line of Credit to pay the invoices from Howard Concrete Pumping Co., Inc., in the amount of \$210,569.30; CME Engineering, Inc., in the amount of \$37,932.59; and Pile’s Concrete Products Company, Inc., in the amount of \$104.00. Cornez seconded the motion. All ayes, motion carried.

3. Welcome Visitors - Sean Isgan, Tom O’Toole, Ken Helsel, Lee Nearhoof, Albert Diehl, Forrest Schucker, Ronald Petrina, Larry Crespo, Roy Fritz, and Robert Oates.

4. Roy Fritz from WPIA-Wireless Internet on Peninsula Water Tank – Roy Fritz from WPIA addressed Council requesting authorization to mount a small tower on top of the Peninsula Water Tank. This would require welding three small posts on the water tank and he would also like to weld three small eyelets on the edge of the water tank for safety hooks.

Sean Isgan from CME Engineering requested that Roy Fritz provide him with the specs i.e. weight of the tower, how the cable is getting attached, how the tower will be mounted, etc.

5. Larry Crespo from Wildlife Solutions-Goose Problem – Larry Crespo from Wildlife Solutions provided a proposal to Council for services which include harassment, nest and egg treatments, and the removal of Canadian Geese.

Stern made a motion to authorize the engagement of Wildlife Solutions to do the nest and eggs treatment at a cost of \$1,777.00 subject to the funding by the Indian Lake Service Corporation. McCauley seconded the motion. All ayes, motion carried.

Albert Diehl stated that he would volunteer to take Mr. Crespo around the Borough and show him the nesting areas.

6. Sean Isgan from CME Engineering – Update on Dam Remediation:

A. Change Order Request #2-Phase II-Dam Embankment Permeation Grouting – Cornez made a motion to accept Change Order Request No. 2 (Proposal #070902, in the amount of \$33,000.00, for Phase II: Dam Embankment Permeation Grouting for the additional work that was requested by The Department of Environmental Protection. Dewar seconded the motion. All ayes, motion carried.

B. Open Water Tank Painting Bids – Bids were opened and they were as follows

	<u>Base Bid</u>	<u>Supplemental Bid</u>
M.K. Painting, Inc.	\$ 75,500.00	\$36,000.00
Superior Industrial Maintenance Co.	\$252,320.00	\$96,200.00
Gemstone, LLC	\$139,000.00	\$77,000.00
D & M Painting Corporation	\$ 49,000.00	\$36,480.00
V & T Painting, LLC	\$ 55,000.00	\$43,000.00
S & T Painting, Inc.	\$146,000.00	\$31,000.00
Central Painting & Sandblasting, Inc.	\$112,000.00	\$50,880.00
Southern Corrosion, Inc.	\$129,028.00	\$48,571.00

Cornez made a motion to table the bids per the engineer’s recommendation. Vogel seconded the motion. All ayes, motion carried.

7. Legal Report

A. David Rohrich-Occupancy Permit for House and Garage – Dean Snyder, Zoning Officer for the Borough, did a walkthrough of Mr. Rohrich’s house and the house was found to be in compliance with the building permit application. However, there is an issue with the garage. There is a complete bathroom in the upstairs of the garage and the two (2) rooms above the garage are completely carpeted, but there were no beds in either one. The Building Permit Application for the garage clearly states that there will be no plumbing fixtures in the garage and no living quarters and Mr. Rohrich did initial these stipulations on the application. It appears that Mr. Rohich is not in compliance with the Building Permit Application for the garage.

Bob Hanson stated we have non compliance to the Building Permit Application but is there non- compliance of the permit to the Borough’s ordinances? Mayor Miscoe stated that you cannot have a dwelling space in an accessory building. You are allowed one dwelling structure per property.

Bob Hanson stated that we have two (2) separate issues. The first issue is that the building does not comply with the Building Permit Application. The second issue is that the building may or may not comply with the Zoning Ordinance.

Attorney Rullo stated that historically when the Borough has found that a property owner was not in compliance the Borough has attempted to work with those individuals to bring the property into compliance with the Building Permit Application either by way of requiring retrofitting to the property in order to bring it into compliance or as relatively close to being within compliance as possible and the Borough has assessed penalties.

Attorney Rullo stated there clearly is a direct determination that there is plumbing where there should not be. The question then becomes what is the remedy that the Borough is seeking.

Bob Hanson stated that he applied for a building application to construct a house with three (3) bedrooms and during construction he decided that he wanted a fourth bedroom and/or a bathroom in the basement, both of which he has done, without getting a revised permit from the Borough.

Attorney Rullo stated that ninety percent of the residents who violate the ordinance do so after an Occupancy Permit is issued. Mr. Rohrich did those things before an Occupancy Permit was issued to him, which requires the Borough to treat him like any other individual, he needs to get an Occupancy Permit and in order to get an Occupancy Permit he needed to have a final inspection. If Mr. Rohrich had done this after the Occupancy Permit was issued and the final inspection completed, it is likely that this issue would never have come to light.

Bob Hanson questioned why Rohrich could not just revise his building permit application. Mayor Miscoe stated that the Zoning Officer can not issue a Building Permit Application for dwelling space in a garage. Attorney Rullo stated that Mr. Rohrich would have had to request a Variance from the Zoning Hearing Board. Hanson stated that he needed to see that in the Ordinance.

Bob Hanson stated that it appears what Mr. Rohrich has done violates the Building Permit Application, not the Zoning Ordinance.. Mr. Hanson requested to see where this violation occurs in the Zoning Ordinance. Attorney Rullo stated that Mr. Rohrich not only violated the Zoning Ordinance by having the dwelling space but Rohrich specifically in the document itself hand wrote that there would be no living space and there would be no plumbing, so that would be a misrepresentation, if in fact, his intentions was to always to have it. That would be a misrepresentation to the governing body.

Sean Isgan stated that if Rohrich created more bedrooms than that is a violation of the Sewage Facilities Act and the Department of Environmental Protection states that the municipalities are responsible for enforcing that.

Mayor Miscoe stated that Rohrich wanted to convert his garage into an extra guest house and that was his intent from the beginning, Rohrich was told that he could not do that and that was reasoning behind having him sign off on those stipulations on the permit which clearly stated that there would be no plumbing fixtures in the garage and no living quarters.

Bob Hanson stated that the issue is did Rohrich violate the Zoning Ordinance, and Hanson does not believe that he violated the Zoning Ordinance.

Mayor Miscoe stated that in R-1 Districts you are allowed one dwelling structure and Rohrich now has two. Hanson stated that Rohrich is not living in the garage nor is anyone else nor had anyone lived in the garage. McCauley questioned if Rohrich has ever used the garage as a bedroom? Hanson stated that he has not. McCauley inquired how he knew that. Hanson stated that Rohrich told him so.

Dean Snyder stated that it clearly states on the Building Permit Application that there would be no plumbing fixtures in the garage and no living quarters, so in order to get an Occupancy Permit Rohrich would need to comply with what the permit required.

Attorney Rullo stated that there is a much bigger issue on the living space because if Rohrich litigates the issue of the living space and it is determined that it is in fact living space then the Borough is in the situation the Sean Isgan raised and they have looked at this and they know what their sewage issues are.

Paul Cornez asked if the municipality uncovers a sewage issue, than is it the municipality's responsibility to report it? Sean Isgan stated that the municipality is responsible for the administration of the Sewage Facilities Planning Act in their municipality.

Bob Hanson asked Dean Snyder if it was his belief that the rooms above the garage are bedrooms. Dean Snyder stated that he asked Jerry Mostoller, the Borough's Sewage Enforcement Officer, as to what he uses to define a bedroom and was told it would need to have a bed and a closet area. When Mr. Snyder did his inspection there was a closet but there wasn't a bed.

McCauley made a motion to allow Rohrich to keep the existing structure as is, however for compensation, a punitive fine of \$20,000.00 will be imposed. Vogel seconded the motion. Hanson called for a roll call vote: Dewar-aye, McCauley-aye, Marhefka-aye, Vogel-aye, Stern-aye, Cornez-aye, Hanson-aye. 6 ayes and 1 naye. Motion carried.

Attorney Rullo stated that he will incorporate a stipulation that Rohrich will need to sign stating that no beds will be placed in the garage.

8. Correspondence:

A. Somerset County Planning Commission-Approved Variance Request for St. Clair Development – The Somerset County Planning Commission approved the variance requests for the Kickapoo Lakeside Townhouses Phase II and Revised Kickapoo Lakeside Townhouses Phase I

B. Southern Alleghenies Planning & Development Commission-2011 Transportation Enhancements Program and Hometown Streets and Safe Routes to School Programs – Hanson made a motion to refer this to the Road and Maintenance Committee. Vogel seconded the motion. All ayes, motion carried.

9. Committee Reports:

A. Public Works:

1. 2010 Road Paving Projects- Stern made a motion to table this matter until the April 28th meeting. Vogel seconded the motion. All ayes, motion carried.

B. Police Report:

1. Ratify Action to Repair Police Cruiser – Dewar made a motion to ratify the authorization given to Mayor Miscoe to authorize the repairs to the police cruiser at Tri-Star in the amount of \$955.05. Cornez seconded the motion. All ayes, Motion carried.

2. Patrol Boat - Cornez made a motion that the Borough does not patrol the lake this summer. Stern seconded the motion. 5 ayes and 2 naves. Motion carried.

3. Beaner Marine-Request for Boat License - Cornez made a motion to authorize a special purpose license to Beaner Marine for the 2010 boating season at a cost of \$75.00. McCauley seconded the motion. All ayes, motion carried.

C. Water and Sewer Report – Vogel asked the Borough Manager to advertise the next Water and Sewer Committee Meeting for May 6, 2010 at 6:30 PM at the Indian Lake Borough Office.

D. PA Rural Water Association-Public Notification Rule – Vogel made a motion to accept the proposal from Swiftreach at an annual cost of \$995.00 for unlimited calls for one year and the committee will revisit this next year. Marhefka seconded the motion. All ayes, motion carried.

E. Sewage Facilities Planning Module for Robert Weitzel – Adopt Resolution for Plan Revision for New Land Development – Vogel made a motion to adopt the Resolution for Plan Revision for New Land Development for Robert D. Weitzel, Jr. located at Comanche #9 as presented. Hanson seconded the motion. All ayes, motion carried.

10. Old Business:

A. Revisit the Make-up of Committees – This matter was tabled until the April 28, 2010 meeting.

11. New Business:

A. Debris Cleanup on Lake – Hanson made a motion to send a notice out in the e-newsletter, a post-card mailing should be sent to all residents, a notice should be posted on the web site, and signs should be purchased and posted at the launch ramp and other various locations throughout the Borough warning everyone about the debris in the lake and to please be careful on the water. Stern seconded the motion. All ayes, motion carried.

B. Water Ski Slalom Course – Attorney Rullo stated that before any authorization is given, the lawsuit that is pending against the Borough by the Ski Club would need to be withdrawn and Attorney Rullo also requested that the limitations that are listed on the policy (Coverage only applies with respect to tournaments, practices, exhibitions, clinics and related activities sanctioned and approved by USA Water Ski, Inc.) be removed. Marhefka made a motion to table this issue until the April 28, 2010 meeting. Dewar seconded the motion. All ayes, motion carried.

Hanson made a motion to grant Mayor Miscoe the authority over the police budget to authorize approved expenditures in accordance with the 2010 budget. Dewar seconded the motion. All ayes, motion carried.

12. Public Comment: None.

With no further business to discuss, McCauley moved and Dewar seconded to adjourn the meeting at 11:35 P.M. All ayes, motion carried.

The next regularly scheduled meeting of the Indian Lake Borough Council will be held on April 28, 2010 at 7:00 P.M. at the Indian Lake Borough Building.

Respectfully submitted,

Theresa L. Weyant
Borough Manager